IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.14392 of 2000

Date of Decision: November 28, 2007

Dr.Sunit C.Singhi .....Petitioner

Versus

Post Graduate Institute of Medical & others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Ms.Neelam, Advocate for the petitioner.

Mr.Vikrant Sharma, Advocate
for respondents No.1 and 2.

Dr.Balram Gupta, Senior Advocate with
Mr.Pankaj Sharma, Advocate for respondent No.3.

Mr.Sudhir Mittal, Advocate
for respondent No.4.

S. D. ANAND, J.

1. The following facts are apparent from the record and are, even otherwise, presently beyond the pale of controversy.

2. The petitioner, who passed his M.D. (Paediatrics) examination in May, 1976, joined the Department of Paediatrics in the Post Graduate Institute of Medical Education and Research (respondent No.1), as a Lecturer and Consultant, on 7.2.1981. For the period from 2.9.1981 to 30.9.1984, he functioned as a Lecturer and Consultant in the University of West Indies, Kingston, Jamaica. Thereafter, he re-joined PGI as Senior

Research Officer in the year 1985. He was appointed and is functioning as Associate Professor of Paediatrics (Emergency and Intensive Care) w.e.f. 1.1.1987.

3. In October, 1998 (vide advertisement Annexure P1), respondent No.1 invited applications for appointment to the two posts of Professor of Paediatrics (Allergy and Immunology) and Professor of Paediatrics (Neo-Natalogy). For the former post, a candidate had to be a holder of an M.D. Degree in the discipline of Paediatrics, with 14 years of teaching and/or research experience in the discipline; while a candidate for the latter post had to be holder of a D.M. and an M.D. Degree in the discipline of New-Natalogy, with 12 years of teaching and/or Research experience after the obtaining of D.M. The petitioner and respondent No.4-Dr.Surjit Singh (impleaded vide order dated 12.1.2001) applied (only) for the post of Professor of Paediatrics (Allergy and Immunology). However, none of them received an interview call. The latter i.e. respondent No.4 did not receive any interview call as he did not have requisite 14 years of experience, as on the last date of receipt of applications i.e. 31.12.1998. The petitioner made a written representation dated 4.11.1999 (Annexure P2) grudging the non-issuance of interview letter to him for the post of Professor of Paediatrics (Allergy and Immunology). Thereupon, respondent No.1 issued a provisional interview letter dated 6.11.1999 (Annexure P3) to the petitioner. In pursuance thereof, the petitioner appeared before the Selection Committee on 15.11.1999 and was selected for appointment to the post of Professor of Paediatrics (Allergy and Immunology). However, the Selection Committee recorded a hand-written note on the proceedings that the petitioner would continue to work in his own area of interest. The

recommendation for appointment of the petitioner to the post aforementioned was put up before the Governing Body of the PGI on 8.12.1999. The Governing Body did not approve the recommendation in respect of the petitioner in view of the hand-written note aforementioned. The Governing Body desired that the posts be re-advertised (Annexure P4).

4. The petitioner, thereupon, made a written representation dated 14.12.1999 (Annexure P5) to the President of the Governing Body to re-consider the decision of the Governing Body in not approving the recommendation made by the Selection Committee to appoint him to the post of Professor of Paediatrics (Allergy and Immunology). The President remitted the matter to the Selection Committee, for consideration of the representation made by the petitioner.

5. In the meantime, respondent No.4-Dr.Surjit Singh filed Civil Writ Petition No.2971 of 2000. The relief sought by him was that the post of Professor of Paediatrics (Allergy and Immunology) be re-advertised. That Civil Writ Petition came up for hearing on 14.3.2000 and this Court stayed the appointment to the post aforementioned vide order dated 14.3.2000 (Annexure P6). In that petition, the averment made by respondent No.4 was that the petitioner (before this Court and a respondent to Civil Writ Petition No.2971 of 2000) was not qualified for the appointment aforementioned as he did not possess two years training in Paediatrics (Allergy and Immunology). The averment, in the context, was that the aforementioned training had been prescribed by the PGI in the year 1994 (Annexure P7).

6. In the course of hearing (of CWP No.2971 of 2000) on

14.3.2000, a Division Bench of this Court passed the following order:

"It has been averred in the writ petition that for the post of Professor of Paediatrics (Allergy and Immunology) in the Post Graduate Institute, Chandigarh respondent No.3 had been selected by the Selection Committee. The recommendations were placed before the Governing Body of the Institute, which is the appointing authority on December 8, 1999 and the following minutes were recorded so far as the post in question is concerned:-

"3. Professor of Paediatrics (Allergy & Immunology).

In view of the comments of the Selection Committee that the selected candidate will continue to work in his own area of interest, the Governing Body felt that this recommendation was not consistent with the job requirement advertised. As such, the Governing Body did not approve the recommendations of the Selection Committee and desired that the post be re-advertised."

It has been averred in the petition that instead of readvertising the post as recommended by the Governing Body of the Institute (appointing authority) the matter was referred back to the Selection Committee at the behest of respondent No.2 to reconsider the candidates who were already considered by the Selection Committee. The post has not been readvertised as ordered by the Governing Body. The apprehension is that respondent No.3's name would again be recommended. It is further alleged that he does not answer the

requisite qualification for the post.

Notice of motion for March 28, 2000.

Appointment to the post of Professor of Paediatric (Allergy & Immunology) in the PGI other than the method as suggested by the Governing Body in its meeting held on December 8, 1999 is stayed.

Copy of the order be given Dasti to the petitioner on payment today."

7. In pursuance of the decision of the President of the Governing Body which (decision) had been ratified by the Governing Body in its meeting held on 15.3.2000, the matter came up for consideration before the Standing Selection Committee which (again) recommended the name of the petitioner for appointment to the post of Professor of Paediatrics (Allergy and Immunology). The recommendation came up before the Governing Body which refrained from passing any orders in view of the stay order dated 14.3.2000 granted by a Division Bench of this Court (Annexure P6). That writ petition came up for hearing before this Court on 27.4.2000 and the following interim order was passed by this Court:

"As per the orders of the President of the Institute/Chairman of the Governing Body, the matter was reconsidered by the Selection Committee in its meeting held on 6.1.2000. These recommendations of the Selection Committee dated 6.1.2000 have not yet been approved by the Governing Body. According to the counsel for the petitioner, the recommendations could not be considered by the Governing Body in its meeting held on 15.3.2000 because of the interim directions given by this

Hon'ble Court on 14.3.2000. Without prejudice to the rights of the petitioner and despite the interim directions of this Hon'ble Court dated 14.3.2000, let the Governing Body consider the recommendations made by the Selection Committee in case of respondent No.3 on 6.1.2000. This may be done by circulation if permitted by law before the adjourned date i.e. 30.5.2000. Those orders will not be implemented as we are finding nothing regard the powers of the President of the Institute to refer the matter to the Selection Committee or ratification of his action by the Governing Body. These will be decided later on.

The decision of the Governing Body on this subject be placed on the record of this Hon'ble Court but be not given effect."

8. Thereafter, the Governing Body of respondent No.1 held a meeting on 27.5.2000 and recorded the following decision qua the relevant item:

"Item No.3

Consideration of minutes of the Standing Selection Committee meeting held on 6.1.2000 (Review) regarding appointment of Professor of Paediatrics (Allergy & Immunoloy) Directions of Hon'ble High Court dated 27.4.2000 in CWP No.2971 of 1999 titled as Dr.Surjit Singh Versus Director, PGI and others.

The proposal was discussed in detail. After discussion the governing Body decided to re-advertisement the post."

9. Further, thereafter that writ petition (No.2971 of 2000) came up before this Court on 30.5.2000. The Civil Writ Petiton was disposed of

with the following order:

> "Learned counsel for the P.G.I. has placed on record a copy of minutes of the meeting of the governing body of the P.G.I. held on May 27, 2000 and has drawn our attention to item No.3 of the minutes. In view of decision on item No.3, learned counsel for the petitioner states that this writ petition may be disposed of as infructuous. We order accordingly. However, any person who may feel aggrieved by the aforesaid decision of the Governing Body would be at liberty to challenge the same before an appropriate forum."

10. The unanimity of facts ends here only. (Insofar as the post of Professor of Paediatrics (Neo-Natology) is concerned, the petitioner did not apply for it for want of required experience. However, the Selection Committee recommended the name of Dr.Anil Narang, respondent No.3 for appointment to that post in spite of the fact that he did not possess the advertised qualifications. As per the allegations of the petitioner "the respondent – PGI considered the same and, as stated above, took a decision that since the examination of D.M. Neo-Natalogy had been conducted for the first time in India in the year 1991 at the P.G.I., no person would be available, who may possess the said qualifications (12 years experience after D.M. Neonatalogy). Having done so, it was incumbent upon the respondent-P.G.I. to either readvertise the post or issue a corrigendum seeking applications from doctors, who would become eligible in view of the relaxation/waiver of the qualification of 12 years experience after D.M. Neo-Natalogy. However, the respondent-P.G.I. Neither issued a fresh advertisement nor a corrigendum nor did it seek applications in view of the

relaxed qualifications from persons such as the petitioner (who was originally ineligible but became eligible by virtue of relaxation/waiver). Respondent-P.G.I. proceeded with the selection and without considering the claims of other eligible doctors, selected the private respondent. It is respectfully submitted that the result is that persons such as the petitioner, who was fully eligible for the post of Professor Paediatrics (Neonatalogy) in view of the relaxed qualifications have been unable to apply and have been illegally excluded from consideration. The selection and appointment of the private respondent is, therefore, illegal having been made in a cloistered manner. The same is, therefore, unsustainable."

11. The petitioner, on the basis of averments aforementioned, applied for the grant of a writ directing the official respondents to appoint him to the post of Professor of Paediatrics (Allergy and Immunology) "in terms of the recommendations of the Statutory Selection Committee with effect from 15.12.1999 when persons in the same selection were appointed". He also applied for a direction to the official respondents to re-advertise the post of Professor of Paediatrics (Neo-Natology) and the quashing of governing body deliberations/decision dated 27.5.2000 (Annexure P14) directing that the post of Professor of Paediatrics (Allergy and Immunology) by readvertisement order dated 15.12.1999(Annexure P18) appointing respondent No.3 to the post of Professor of Paediatrics (Neo-Natology).

12. In the written statement, official respondents No.1 and 2 averred that the petitioner deserves to be non-suited for the reason that the order dated 30.5.2000 (Annexure P15) attained finality for want of a challenge till date from anyone including the petitioner. The plea raised thereby is that as that order was not contested before any higher forum, the

petitioner cannot request for the re-opening thereof. Qua the appointment to the post of Professor of Paediatrics (Neo-Natology), it was averred that the petitioner has no locus standi to challenge it inasmuch as he never applied for it. The further averment, in the context, is that the appointment orders dated 15.12.1999 of respondent No.3 not having been challenged by the petitioner for the last almost two years, he is estopped from challenging the same. The further averment, in the context of re-iteration of validity of appointment of respondent No.3, is that "respondent No.3 has been working in the Neonatal Section of the department of Paediatrics from the date he joined as a Lecturer. As the unit required the services of two consultants, therefore to support Dr.O.N.Bhakoo, Dr.Narang was assigned to the Neonatal Section w.e.f. 23.9.74. Since then he has continuously worked in the neonatal unit of the department of Paediatrics. All his research work since 1974 is related to the field of Neonatalogy. In view of his expertise in the subject, his outstanding performance as a Neonatologist in which he has already built a national reputation for himself and his research in the field of Neonatology, the Head of the Department recommended that the post which Dr.Narang has been occupying may be re-designated as Additional Professor of Paediatrics (for development of Neonatology). Therefore to help for better teaching programme for students of D.M. (Neonatology) at the Institute, the proposal to change the post of Additional Professor of Paediatrics held by respondent No.3 to that of Additional Professor of Paediatrics (Neonatology) was placed before the Academic Committee and the said Committee in its meeting held on 22.4.1991 approved the proposal. The same proposal was also approved by the Governing Body in its meeting held on 19.2.1992. As recommended by

the Academic Committee and as approved by the Governing Body the designation of the existing post of Additional Professor of Paediatrics (held by Dr.Anil Narang) was changed to that of Additional Professor Paediatrics (Neonatology) as per annexure R1/1, respondent No.3 continued working in the Neonatalogy section since 23.9.1974. Even he has been independent incharge of Neonatology at PGIMER, Chandigarh during the following periods:

i) 23.9.74 to 9.12.75 = 1 ¼ years

ii) 23.1.81 to 14.8.83 = 2 ¼ years

iii) 1.8.90 to 20.9.90 = 2 months

iv) 8.7.91 to 11.10.93 = 2 years 3 months

On the retirement of Prof.O.N.Bhakoo in September, 1995. Respondent No.3 became head of Neonatology section in October, 1995 and is still the head of the said unit of Neonatology at the respondent Institute. Along with Prof.O.N.Bhakoo, respondent No.3 has been instrumental in the development of D.M. (Neonatology) course which is the First one in India. Respondent No.3 has been the examiner for D.M. Neonatology since 1991, convener of D.M. Neonatology examination during the leave of Professor Bhakoo for the period from July 1991 to October 1993 and thereafter on the retirement of Dr.Bhakoo from September 1995 onwards. Respondent No.3 has also been the external examiner for D.M. Neonatology examination of the Mumbai University – the only other course conducted in the country for the D.M. Neonatology degree course in India. It is also pertinent to mention that Professor O.N.Bhakoo who was heading the section of Neonatology at the respondent Institute was also M.D. in Paediatrics but yet it was he who introduced the D.M. Course in Neonatology at the respondent Institute.

Similarly, Dr.Anil Narang is also heading and imparting training to the students of D.M. Course in Neonatology at the respondent Institute since then. In these circumstances, by no stretch of imagination is respondent No.3 in any way not equipped or qualified to hold the post."

13. Besides re-iterating those very averments, respondent No.3 also contested the locus standi of the petitioner to challenge his appointment as the latter never applied for that post. Respondent No.3 was appointed vide appointment letter dated 15.12.1999. It was averred that the present writ petition which had been filed after almost a gap of one year was not maintainable. While detailing certain experience which he had attained in the specialty of Neonatology, respondent No.3 averred that the Competent Authority had validly granted relaxation on point of experience. The relevant averment is re-produced as under:

> "That it is for the first time in the year 1991 that DM Course was started in the specialty of Neonatology at the respondent Institute. Prior to this, nowhere else this course was being run. Therefore, possibly nobody could have 12 years experience in the field of Neonatology with DM Degree in the year 1999. The prescription of such eligibility requirement was in itself a 'practical impossibility.' Any such requirement which was 'practically impossible', could not be considered as mandatory. It was keeping in view this practical impossibility that the Head, Department of Paediatrics of the respondent Institute vide letter dated October 20, 1997 had pointed out that the first DM (Neonatology) qualifying examination was held in India in the respondent Institute in the year 1991. Therefore, there was

no possibility of the availability of any candidate with DM (Neonatology) Degree with 12 years experience. This course was not being conducted anywhere in the country at the time when it was started in the respondent Institute. The post of Professor (Neonatology) was advertised three times. Each time, no outsider applied for the post as none fulfilled the qualifications. It was, therefore, suggested by the Head that the qualification/experience may be changed to- 14 years Experience as in case of other disciplines after obtaining MD (Paediatrics). It was also pointed out by the Head that similar change had been approved by the Governing Body of the Institute for the post of Professor in the Department of Pulmonary Medicine in its meeting held on July 12, 1994. This recommendation/suggestion of the Head of the Department of Paediatrics was duly approved by the Academic Committee vide agenda item No.4 in its meeting held on March 09, 1998 as required under Regulations 23(3) of the PGIMER, Chandigarh Regulations, 1967. It would thus be clear that as per the Regulation, the Academic Committee of the respondent Institute had duly approved the changes in the educational qualifications/experience for the post of Professor (Neonatology). The formal approval to this change by the Governing Body could not take place prior to the advertisement since the Governing Body did not get the opportunity to consider the recommendations made by the Academic Committee. It was in this background that the Governing Body

ultimately gave the approval when the same was considered in its meeting held on March 15, 2000. It would be pertinent to mention here that since the change had been duly approved as per the Regulation by the Academic Committee in its meeting held on March 09, 1998, the approval given by the Governing Body would be deemed to be effective with effect from March 09, 1998. In view of this position, it would not be correct to say that the Answering Respondent was not eligible for the post of Professor (Neonatology)."

14. Respondent No.4 averred, in the form of a preliminary objection, that "petition is not bonafide and has been filed in collusion with the official respondents to defeat the rights of the answering respondent. In the earlier petition filed by the answering respondent i.e. CWP No.2971 of 2000, the official respondents had supported the stand taken by the present petitioner that he was qualified for the post of Professor of Paediatrics (Allergy and Immunology). Such a stand was taken despite the fact that according to the qualifications prescribed for the said post by the Academic Committee and approved by the Governing Body of P.G.I.M.E.R. Chandigarh, the writ petitioner is not qualified for the post of Professor of Paediatrics (Allergy and Immunology)." The further averment, in the context, is that the "present writ petition has been filed with ulterior motive of taking advantage of the collusive written statement filed in Civil Writ Petition No.2971 of 2000. The collusion is further proved by the fact that the post of Professor of Paediatrics (Allergy and Immunology) was re-advertised vide advertisement No.7 of 2000 (ESTT-I), dated 7.9.2000 (Annexure P16). However, the same was withdrawn vide a Corrigendum,

dated September 27, 2000 Annexure P-17. The advertisement was withdrawn at the asking of the writ petitioner, which is borne out from the written statement filed on behalf of respondent Nos.1 and 2. It is thus evident that the present petition has been filed with the sole intention of defeating the rights of the answering respondent". It was further averred that the petitioner was not called for interview to the post aforementioned as he was not qualified for the purpose and it was on that account that a provisional call letter was sent to him. In a way, respondent No.4 re-iterated the correctness of the approach adopted by the Governing Body to re-advertise the post.

15. I have heard learned counsel for the parties and have perused the documentation available on the record.

16. The learned Senior counsel appearing on behalf of the respondents, at the very outset, challenged the very competence of the present writ plea on an averment that the order dated 30.5.2000 (Annexure P15) passed by this Court had not been challenged by anyone till date and had attained finality. In that view of things, the argument proceeded, the petitioner cannot be heard to make a grievance of the Governing Body decision to re-advertise the post of Professor of Paediatrics (Allergy and Immunology).

17. Learned counsel for the petitioner resisted the plea advocated by arguing that the present writ petition had been instituted in the year 2000 itself immediately after the decision taken by the Governing Body to advertise the post aforementioned.

18. The plea, raised on behalf of the respondents, to challenge the maintainability of the present petition is plainly bereft of merit. Prior

thereto, Civil Writ Petition No.2971 of 2000 had been disposed of by this Court on 30.5.2000. It may be noticed in that behalf that the impugned decision of the Governing Body had been taken on 27.5.2000. The present Writ Petition had been filed shortly thereafter. It cannot, thus, be pleaded with any justification that the present writ plea is not maintainable.

19. Mr.Rajiv Atma Ram, learned Senior counsel appearing on behalf of the petitioner, argued that the decision taken by the Governing Body, in the course of its meeting held on 27.5.2000, is thoroughly unsustainable, inasmuch as it does not at all indicate the reasons in support thereof. The learned counsel argued that the eligibility of the petitioner for appointment to the post of Professor of Paediatrics (Allergy and Immunology) being beyond the pale of controversy and there also being no dispute that the Standing Selection Committee recommended the name of the petitioner only on both the occasions, the Governing Body was compulsively required to indicate some bit of reasons to over-rule the recommendation made by the Standing Selection Committee. Learned counsel argued that this aspect of the matter has to be appreciated in the light of the stance taken by none-else or other than respondent No.1 itself (in the written statement filed in Civil Writ Petition No.2971 of 2000) that the petitioner had been validly recommended for appointment to the post aforementioned. The pure and simple plea raised is that the Governing Body could not have wished away the 'consideration' of the recommendation made by the Selection Committee recommending the name of the petitioner for appointment to the post of Professor of Pediatrics (Allergy & Immunology) without recording any reasons and there was no justification for it to order that the post be re-advertised.

20. The plea was resisted by the learned counsel appearing on behalf of respondents No.1, 2 and 4. It was argued that the Standing Selection Committee did not make an unconditional recommendation for the appointment of the petitioner and that the Governing Body was fully justified in turning down the recommendation in view of the handwritten note (on the proceedings of the Committee) that the petitioner would continue to work in his own area of interest.

21. I have given my careful thought to the pointed issue. It is apparent from the material obtaining on the record that the resistance offered to the plea aforementioned is totally devoid of force. The fact that it was only the petitioner who was eligible for appointment to the post of Professor of Paediatrics (Allergy and Immunology) was not disputed in the course of the written statement filed by respondent No.1 in Writ Petition aforementioned. Even on point of fact, it is apparent that non-issuance of an interview letter (to the petitioner) was not in order and the error came to be rectified by respondent No.1, though on the basis of a representation made by the petitioner. The fact that the interview call indicated that it was provisional in character, is plainly insignificant in the proven facts and circumstances of the case.

22. The handwritten 'rider'/endorsement recorded by the Standing Selection Committee while recommending the name of the petitioner for appointment to the post of Professor of Paediatrics (Allergy and Immunology) cannot, by any stretch of interpretation, be said to eclipse the valid claim of the petitioner. For appreciation of that aspect, it would be appropriate to advert to the written statement (Annexure P10) filed by respondent No.1 in the Writ Petition aforementioned. It is in the course of

para 6 (on merits) thereof that the following averment, in the context, was made:

> "The inference drawn by the petitioner that approval was not granted because it was felt that respondent No.3 did not fulfill the job requirement is imaginary. The note that the candidate would continue to work in his own area of interest was placed on the record of Standing Selection Committee in the interest of the working of the Institute with the intention that respondent No.3 will continue to look after the work of Emergency and Intensive Care Services in addition to his own duties of Professor of Paediatrics (Allergy and Immunology) so that the work of the department and the Institute is not disrupted. However, the Governing Body in its meeting of 8.12.1999 did not have the benefit of the presence of Director of the Institute (and Member Secretary Governing Body) or Chairman of Standing Selection Committee who participated in the selection process and who had full knowledge of the background and the motive of the standing selection committee while placing the note. Consequently, the Governing Body put the aforementioned note without having the presence of Member Secretary of the Selection Committee was well as the chairman of the Selection Committee who could have explained the object of the note, it is appropriate to mention here that the incumbent to the post of Director Prof. B.K.Sharma had retired on 30.11.1999 and the newly appointed Director Prof. N.K.Ganguly's appointment was stayed by the Hon'ble High

Court." (Underlining for emphasis)

23. As would be apparent from a conjunctive perusal of the averments in the present case and also Annexure P10, the Standing Selection Committee recorded the handwritten endorsement in its own wisdom and in the larger interest of the Institution. Even at the cost of repetition, it may be noticed that the endorsement was not aimed at providing any relaxation to the petitioner in the matter of either minimum academic qualifications or the experience required for the appointment. That being so, the endorsement cannot be utilized to visit the petitioner with adverse consequence in the matter of the validity of the recommendation aforementioned.

24. The reliance placed by learned counsel for respondents No.1 and 2 upon **Satya Narain Shukla Vs. Union of India and others,** 2006(9) Supreme Court Cases 69 and **Dr.J.Shashidhara Prasad Vs. Governor of Karnataka and another,** (1999) 1 Supreme Court Cases 422, is mis-conceived. In **Satya Narain Shukla's** case (supra), the Apex Court was dealing with the non-recording of reasons in the matter of non-empanelment of the appellant to the post of Additional Secretary/Secretary to the Government of India. In that case, the Court noticed that from the minutes of the Sub Committee, it was evident, that (Committee) had taken into account the criteria that was laid down for holding such selection in para 14 of the Central Staffing Scheme. It was in the light of those peculiar facts that the Court held that the mere non-recording of reasons for non-empanelment would not mean that there had been no proper consideration of the merits in the context. Insofar as **Dr.J.Shashidhara Prasad's** case (supra) is concerned, that only appears to have been supportive of the plea

raised that a selectee has no indefeasible right of appointment. In that case, an order dated 20.8.1997 appointing the appellant as Vice-chancellor w.e.f. 4.9.1997 was passed. However, that appointment order was cancelled on 21.8.1997 on the ground that a criminal case was pending against him. It was on account of the pendency of the criminal case that the Chancellor did not find it desirable to appoint that appellant as the Vice-Chancellor. The appellant was subsequently acquitted in the criminal case. It was in the light of those facts that the Apex Court held that the cancellation order was not stigmatic and that the principles of natural justice were not attracted. The plea that an opportunity of hearing ought to have been afforded before cancellation was declined. While dealing with certain judicial pronouncements relied upon by the petitioner in that case, the Apex Court held that a selectee cannot claim to have a right of hearing before the select list is cancelled "for bonafide and valid reasons and not arbitrarily".

25. In the light of foregoing discussion, the resistance offered by the respondents (particularly respondents No.1 and 2) to the petitioner's grievance (noticed in para 20 of this judgment) , would appear to be without any foundation whatsoever.

26. However, the petitioner would not appear to be on a firmer footing insofar as the challenge to the appointment of respondent No.3 is concerned. As noticed in an earlier part of the judgment, the petitioner did not even apply for appointment to the post of Professor of Neo-Natology. The advertisement (Annexure P1) categorically indicated that the candidates for the two advertised posts were required to file independent applications for those posts. It further contained a precise clause that "age and experience relaxable in exceptional cases on the recommendations of the

Selection Committee". Though it is apparent from the record that respondent No.3 was not eligible in terms of experience, he applied for the post aforementioned and was appointed in terms of relaxation granted by the Competent Authority. The grant of relaxation cannot be faulted on any valid score inasmuch as the advertisement categorically indicated that age and experience were relaxable in exceptional cases on the recommendation of the Selection Committee. Even otherwise, the material obtaining on the record indicates that no candidate with 12 years' experience after obtaining D.M. Degree could be available in view of the fact that the D.M. Course in the specialty of Neo-Natalogy was started for the first time at the P.G.I. itself in the year 1991 and prior thereto, "nowhere else this Course was being run" and "the prescription of such eligibility requirement was in itself a 'practical impossibility'." If the petitioner was so inclined, he could offer his candidature for that post as well in the light of the relaxation feasibility clause indicated in the advertisement itself. As the petitioner did not even offer his candidature, he cannot be heard to make a grievance of the appointment of respondent No.3 to the post of Professor of Neo-Natalogy.

27. In the course of the pleadings, respondent No.4 raised a precise plea that the present litigation is reflective of what he termed as collusion between the petitioner and respondent No.1. The plea raised is that the petition has been filed "to defeat the rights of the answering respondent'. In that context, it was averred that the petitioner was not qualified for the appointment (for which his name had been recommended twice by the Selection Committee).

28. The plea is not borne out by the material obtaining on the record. It would be pertinent to point out here that respondent No.4 was not

even eligible to apply for appointment to the post of Professor of Paediatrics (Allergy and Immunology) as he did not have the required experience by the last date for receipt of applications for that post. In that context, it would be relevant to quote hereunder the pleadings offered by respondent No.1-PGI in Civil Writ Petition No.2971 of 2000 filed by respondent No.4. Annexure P10 is a copy of written statement filed by the PGI and the other respondents. Preliminary objection No.1 thereof is re-produced as under in the context:

> "That the petitioner has no locus standi to file the present writ petition as he was not eligible for the post of Professor of Paediatrics (Allergy & Immunology) advertised by the respondent Institute in October, 1998. The petitioner did not fulfil the criteria of 14 years of teaching and/or research experience in the discipline even on December 31st, 1998 i.e. the last date of receipt of application of the post of Professor of Pediatrics (Allergy & Immunology). This is why, the petitioner was not issued the call letter even for interview for the aforementioned post. As per the advertisement for the post of Professor of Pediatrics (Allergy & Immunology), the following qualifications/experience were required:-
>
> Education qualification
>
> M.D. (Pediatrics)
>
> Experience
>
> 14 years teaching and/or research experience in the discipline/subject concerned after obtaining the prescribed post graduate qualification i.e. M.D. (Pediatrics)."

29. In para Nos.3 and 4 (on merits) of the counter (Annexure P10), it was re-iterated that "it is clarified that respondent No.3 had more than 14 years (22 years 6 months) of required teaching and or research experience after M.D. on the last date for receipt of applications i.e. 31.12.1998 whereas the petitioner did not fulfill the criteria of 14 years of required teaching and/or research experience even on the last date of receipt of applications". In para No.3 (on merits) of the counter, the categorical stance taken by the PGI was that "respondent No.3 was selected to the post of Professor of Paediatrics(Allergy & Immunology) by Standing Selection Committee purely on basis of his merits and as per the criteria as laid down in the advertisement issued in October, 1998.

30. Insofar as respondent No.4 is concerned, he has not been able to even aver that the non-issuance of an interview letter to him was inappropriate or that he was eligible for being considered for appointment to the post aforementioned. In fact, all that he has averred is that "the answering respondent presently possesses the requisite qualification of 14 years of experience in the discipline concerned after obtaining qualifying degree of M.D. As on date, he is the only one in the respondent Institute, who fulfills the requisite qualifications for the post of Professor of Pediatrics (Allergy and Immunology)".

31. As would, thus, be apparent from a conjunctive perusal of the stance taken by respondent No.1 in Civil Writ Petition No.2971 of 2000, and the own pleadings of respondent No.4, he was not qualified for consideration for appointment to the post aforementioned.

32. Further, there is nothing to indicate that the petitioner did not possess the qualifications required for consideration of his name for

appointment. He did possess the qualifications announced to the prospective candidates by the advertisement (Annexure P1).

33. The following facts can, thus, be safely culled out from the record:

a) Though the petitioner was eligible for being considered for appointment to the post of Professor of Paediatrics (Allergy and Immunology), in terms of the qualifications and the experience announced to the prospective candidates by the advertisement, an interview letter was not issued to him. It was only on a representation made by him that an interview letter was issued to him, which (interview letter) was described to be provisional in character. In the first instance, it was inappropriate on the part of respondent No.1 to have withheld the issuance of interview letter to the petitioner. The infraction was compounded by describing the interview letter (subsequently issued on representation) to be provisional in character. A more sagacious and competent approach, in the context, was expected.

b) The stance taken by respondent No.1 in the course of the counter filed by it in Civil Writ Petition No.2971 of 2000 (filed by respondent No.4 – Dr.Surjit Singh) was that the recommendation (twice) made by the Selection Committee for the appointment of the petitioner to the post of Professor of Paediatrics (Allergy and Immunology) was appropriate.

c) The petitioner never ever indicated that inspite of his appointment to the post of Professor of Paediatrics, he would

like to continue to work in the area of his interest. If the Selection Committee, in the exercise of its own discretion, opted to record the handwritten note (that the petitioner would continue to work in the area of his own interest), the petitioner cannot be visited with penal consequences (of non-appointment) on the basis thereof. In that context, it cannot be lost sight of that the above note was recorded by the Selection Committee in the larger interest of the Institution (as noticed in para 22 of the judgment). In that view of things too, there is no reason why the petitioner should be made to suffer for it.

d) There is no force whatsoever in the plea raised by respondent No.4 that there is any collusion between the petitioner and respondent No.1 to defeat the right of that respondent for appointment to the post of Professor of Pediatrics (Allergy & Immunology).

e) In fact, there is ample material obtaining on the file that respondent No.4 did not even have the minimum experience required (as on the last date for the receipt of applications for the post under reference).

f) The petitioner cannot validly have a grievance qua the validity of appointment of respondent No.3 to the post of Professor of Pediatrics (Neo-Natology) in view of the fact that it was indicated in the advertisement itself that the qualification and experience required was relaxable. In his own wisdom, the petitioner did not opt to apply for the post. Though respondent No.3 did not have the minimum experience, he was appointed

in terms of the relaxation clause.

34. In the light of above facts, it is apparent that the governing body had no justification whatsoever to take a decision to re-advertise the post, particularly when no reason had at all been recorded in the course of the proceedings.

35. Exodus of experts, medical personnel in particular, has been bane of our system. Whether for want of sincerity or whatever other cause, the endeavours at stemming the rot have not been noticeably successful. The present case would appear to indicate one major factor which would impel competent/eligible medical personnel settle for foreign shores in view of the persistent and unjustified denial of their due in their own country. This is precisely what is proved to have happened in the present case. The petitioner is a post graduate medico, with impeccable academic credentials. Notwithstanding his eligibility in terms of the required qualifications and experience, he was initially denied an interview call for inexplicable reasons. A grievance made by him brought forth an interview call which again, for equally inexplicable reasons, was described to be provisional in character.

36. Further, inspite of the fact that the appointment of the petitioner to the post of Professor of Pediatrics (Allergy & Immunology) was twice recommended by the Selection Committee, the governing body opted to just say in the proceedings that the post be re-advertised.

37. For the reasons recorded herein before, the writ petition filed by the petitioner shall stand allowed in part. The decision of the governing body, in the course of its meeting on 27.5.2000 to order re-advertisement the Allergy and Immunology post is set aside. The Governing Body – respondent No.2 is directed to re-consider the matter pertaining to the appointment under reference and take whatever decision it wants to in the totality of the facts and circumstances of the case. The reasons (for whatever decision is taken in the matter) shall be noticed by the Governing Body in the proceedings in the context. The decision taken by the Governing Body shall be uninfluenced and unfettered by the observations made by this Court in the foregoing paras. The power to take a decision undisputedly lies with the Governing Body. The only rider thereupon indicated by this Court is with regard to the recording of reasons in the context of the decision taken by it. The exercise shall be concluded by the Governing Body within one month from today.

38. The petition shall stand dismissed qua the challenge to the appointment of respondent No.3.

39. The petitioner shall be entitled to the costs of the cause.

(S. D. ANAND)
JUDGE

November 28, 2007
SRM

Note: Whether referred to reporter ? Yes/No